

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,) 8:96CR33
)
 Plaintiff,)
)
 vs.)
)
TERRI A. PAYSENO,)
)
 Defendant.)

**MEMORANDUM
AND ORDER**

This matter is before the court upon the defendant's notice of appeal and motion for appointment of counsel on appeal (filing 86) which were unaccompanied by either the \$455.00 appellate filing fee or by a motion to proceed in forma pauperis on appeal. The Federal Rules of Appellate Procedure provide that

a party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court. The party must attach an affidavit that: (A) shows in the detail prescribed by Form 4 of the Appendix of Forms [to the Federal Rules of Appellate Procedure] the party's inability to pay or to give security for fees and costs; (B) claims an entitlement to redress; and (C) states the issues that the party intends to present on appeal.

Fed. R. App. P. 24(a). If the motion is granted after the necessary documentation is filed with the district court, the party may proceed on appeal without prepayment of fees or costs in either court or the giving of security therefor. I shall order the defendant to either file a motion to proceed in forma pauperis on appeal, along with the information needed to support such a request as stated above, or pay the \$455.00 appellate filing fee.

Because this court does not have jurisdiction to appoint counsel for purposes of appeal, the defendant's motion for appointment of counsel on appeal shall be

denied. Defendant is directed to request that the Eighth Circuit Court of Appeals appoint her counsel for purposes of appeal.

IT IS ORDERED:

1. On or before June 29, 2007, the defendant shall either (a) file in this court a motion to proceed in forma pauperis on appeal as well as an affidavit complying with Form 4 of the Appendix of Forms to the Federal Rules of Appellate Procedure showing the defendant's inability to pay or to give security for fees and costs, an entitlement to redress, and a statement of the issues the defendant intends to present on appeal (see form attached to this order), or (b) pay the \$455.00 appellate filing fee;
2. The processing of the defendant's notice of appeal (filing 86) shall be delayed pending the defendant's submission of the above-described motion and affidavit;
3. When the defendant files the above-described affidavit, the Clerk of the United States District Court for the District of Nebraska shall immediately direct such affidavit to the chambers of the undersigned United States district judge;
4. Defendant's motion for appointment of counsel on appeal (filing 86) is denied.

May 29, 2007.

BY THE COURT:
s/ *Richard G. Kopf*
United States District Judge

Westlaw.

Federal Rules of Appellate Procedure Form 4, 28 U.S.C.A.

C

United States Code Annotated Currentness

Federal Rules of Appellate Procedure (Refs & Annos)

Appendix of Forms

→ Form 4. Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis

United States District Court for the _____ District of _____

A.B., Plaintiff

v.

C.D., Defendant

Case No. _____

Affidavit in Support of Motion

Instructions

I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S.C. § 1621.)

Signed: _____

Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write in that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.

Date: _____

My issues on appeal are:

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months	Amount expected next month
Income source	Average monthly amount during the past 12 months	Amount expected next month
	You	Spouse
Employment	\$ _____	\$ _____
Self-employment	\$ _____	\$ _____
Income from real property (such as rental income)	\$ _____	\$ _____
Interest and dividends	\$ _____	\$ _____
Gifts	\$ _____	\$ _____
Alimony	\$ _____	\$ _____
Child support	\$ _____	\$ _____
Retirement (such as social security, pensions, annuities, insurance)	\$ _____	\$ _____
Disability (such as social security, insurance payments)	\$ _____	\$ _____
Unemployment payments	\$ _____	\$ _____
Public-assistance (such as welfare)	\$ _____	\$ _____
Other (specify): _____	\$ _____	\$ _____
Total monthly income:	\$ _____	\$ _____

2. List your employment history, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

3. List your spouse's employment history, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

4. How much cash do you and your spouse have? \$ _____

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial institution	Type of account	Amount you have	Amount your spouse has
		\$ _____	\$ _____
		\$ _____	\$ _____
		\$ _____	\$ _____

If you are a prisoner, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home	(Value)	Other real estate	(Value)	Motor vehicle #1	(Value)
------	---------	-------------------	---------	------------------	---------

			Make & year:	_____
			Model:	_____
			Registration #:	_____

Motor vehicle #2 (Value) Other assets (Value) Other assets (Value)

Make & year:	_____	_____	_____
Model:	_____	_____	_____
Registration #:	_____	_____	_____

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
---------------------------------------	--------------------	----------------------------

7. State the persons who rely on you or your spouse for support.

Name	Relationship	Age
------	--------------	-----

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

Rent or home-mortgage payment (include lot rented for mobile home)	You \$ _____	Your Spouse \$ _____
Are real-estate taxes included? [] Yes [] No		

Is property insurance included? [] Yes [] No

Utilities (electricity, heating fuel, water, sewer, and Telephone)	\$ _____	\$ _____
Home maintenance (repairs and upkeep)	\$ _____	\$ _____
Food	\$ _____	\$ _____
Clothing	\$ _____	\$ _____
Laundry and dry-cleaning	\$ _____	\$ _____
Medical and dental expenses	\$ _____	\$ _____
Transportation (not including motor vehicle payments)	\$ _____	\$ _____
Recreation, entertainment, newspapers, magazines, etc.	\$ _____	\$ _____
Insurance (not deducted from wages or included in Mortgage payments)	\$ _____	\$ _____
Homeowner's or renter's	\$ _____	\$ _____
Life	\$ _____	\$ _____
Health	\$ _____	\$ _____
Motor Vehicle	\$ _____	\$ _____
Other: _____	\$ _____	\$ _____
Taxes (not deducted from wages or included in Mortgage payments)	\$ _____	\$ _____
(specify): _____		
Installment payments	\$ _____	\$ _____
Motor Vehicle	\$ _____	\$ _____
Credit card (name): _____	\$ _____	\$ _____
Department store (name): _____	\$ _____	\$ _____
Other: _____	\$ _____	\$ _____
Alimony, maintenance, and support paid to others	\$ _____	\$ _____
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ _____	\$ _____
Other (specify): _____	\$ _____	\$ _____
Total monthly expenses: _____	\$ _____	\$ _____

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

[] Yes [] No If yes, describe on an attached sheet.

10. Have you paid--or will you be paying--an attorney any money for services in connection with this case, including the completion of this form? Yes No

If yes, how much? \$ _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid--or will you be paying--anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

[] Yes [] No

If yes, how much? \$ _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the

docket fees for your appeal.

13. State the address of your legal residence.

Your daytime phone number: _____

Your age: _____ Your years of schooling: _____

Your social-security number: _____

CREDIT(S)

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

F. R. A. P. Form 4, 28 U.S.C.A., FRAP Form 4

Amendments received to 02-08-07

Copr. © 2007 Thomson/West. No Claim to Orig. U.S. Govt. Works.

END OF DOCUMENT

© 2007 Thomson/West. No Claim to Orig. U.S. Govt. Works.